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**IN THE
COURT OF APPEALS OF INDIANA**

JASON KELLY,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0607-CR-587
)	
STATE OF INDIANA,)	
)	
Appellee.)	

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
CRIMINAL DIVISION, ROOM 4
The Honorable Patricia J. Gifford, Judge
The Honorable Steven Rubick, Master Commissioner
Cause No. 49G04-0510-FB-186083

May 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Following a bench trial, Appellant-Defendant, Jason Kelly, appeals his conviction for Theft as a Class D felony,¹ for which he received a sentence of two years executed in the Department of Correction. Upon appeal, Kelly challenges the sufficiency of the evidence to support the judgment.

We affirm.

On September 21, 2005, Linda Graham (“Linda”) resided at 317 North Beville, Indianapolis, with her three children and her husband, Jason Graham, (“Graham”), who was a friend of Kelly’s. Linda testified that when she and Graham arrived home around 3:40 p.m. that day, she observed that her front door was open, her back window was lying on the kitchen floor, and the television² in her bedroom was missing. According to Linda, Graham’s stepfather had purchased the missing television for her and Graham less than a year prior. Linda testified that although Graham had taken household items in the past in order to sell them for purposes of buying cocaine, to her knowledge he had not authorized Kelly to take and sell such items, and further, upon taking things in the past, Graham had not left doors open and windows broken. Linda called the authorities.

Indianapolis Police Department Officer Andrew Sheler responded to Linda’s complaint. Upon arriving at the scene, Officer Sheler also observed that the front door was open, and that a back window had been pushed out of the frame and was lying on the kitchen floor. Officer Sheler further took note of the missing television.

¹ Ind. Code § 35-43-4-2 (Burns Code Ed. Repl. 2004)

² The charging information stated that the television was a twenty-seven-inch Panasonic television. Although Linda testified that it was possibly a Sylvania, the trial court, in denying Kelly’s motion for a directed verdict on the theft charge, concluded that its brand was not material.

Neighbor Renee Kennedy testified that on September 21, 2005, at approximately 2:00 p.m., she observed Kelly carrying a television out the front door of the Graham home and down the steps to a car, where he and a tall, black male put the television into the trunk and drove off. Kennedy had not seen Kelly enter the home. According to Kennedy, Kelly did not shut the front door as he left. Kennedy later identified Kelly in a photographic lineup.

On October 27, 2005, Kelly was charged with burglary as a Class B felony and theft as a Class D felony. Following the State's presentation of its case-in-chief, Kelly moved for a directed verdict on the burglary charge, which the trial court granted.

During presentation of the defense's case, Kelly testified that he and Graham had been friends for approximately twenty years. According to Kelly, Graham had sold the television the night before to the "dope man," and Kelly was merely assisting this "dope man" by helping him transport the television out of Graham's house and into the "dope man's" car. Tr. at 34. According to Kelly, he was in charge of helping the "dope man" because Graham did not want Linda to know that the "dope man" had given them crack or that Graham had allegedly sold the television set. Tr. at 35. Kelly testified that he believed the television at issue was both Graham's and Linda's. Kelly further testified Graham had given him permission to take the television, that Graham had left the door unlocked for him, that he did not go through the window, and that he was unaware of how the window came to be on the floor. On cross-examination, Kelly admitted that he has been convicted in the past for theft and that he was on probation for burglary. He

additionally testified that Linda had not given permission for him to take the television. Graham did not appear for trial or testify.

Following trial, the court found Kelly guilty and entered judgment of conviction against him for theft. In a sentencing hearing held that day, the court sentenced Kelly to two years executed in the Department of Correction.

Upon appeal, Kelly challenges the sufficiency of the evidence to support his theft conviction. Specifically, Kelly claims that there was insufficient evidence that his control over the television was unauthorized.

Our standard of review for a sufficiency-of-the-evidence claim is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. Kien v. State, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), trans. denied. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. Id. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. Id. It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. Jones v. State, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

Indiana Code § 35-43-4-2 provides, in pertinent part, that “[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony.”

Kelly's claim upon appeal that his control over the television was authorized is merely an invitation for us to reweigh the evidence, which we are not inclined to do. While Kelly testified that Graham authorized him to take the television for the "dope man," there was no evidence or testimony besides his own in support of this claim, and Kelly has demonstrated credibility problems as evidenced by his prior convictions for crimes of dishonesty, i.e., theft and burglary. See Ind. Evid. R. 609(a). Further, regardless of whether Kelly was given authority by Graham to take the television, the trial court was within its discretion to conclude that he knew he did not have such authority from Linda.³ Kelly's testimony indicated he knew that the television was jointly owned by both Graham and Linda and that he sought to remove the television without Linda's knowledge. Considering the absence of evidence corroborating Kelly's story, Kelly's credibility problems, and Kelly's testimony indicating his wish to remove the television without Linda's knowledge, we find Kelly's challenge to the sufficiency of the evidence to support his theft conviction on the basis that he was exerting authorized control over the television to be without merit. The trial court was well within its discretion to conclude Kelly's removal of the television was unauthorized. We therefore defer to the trial court's weighing of the evidence and its credibility assessments in affirming Kelly's conviction for theft.

The judgment of the trial court is affirmed.

SHARPNACK, J., and CRONE, J., concur.

³ The charge clearly alleged that the property taken was "the property . . . of Linda Graham . . ." App. at 14.

